

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THE SIERRA CLUB,

Plaintiff,

vs.

GENON POWER MIDWEST LP,

Defendant.

Civil Action No. 2:19-cv-1284

Hon. William S. Stickman IV

**PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT ON JURISDICTION
AND LIABILITY**

Plaintiff, Sierra Club, hereby moves for partial summary judgement on the jurisdictional issues related to their claims and also as to the Defendant’s liability for violating a condition in its permit prohibiting it from causing a change in stream temperature of more than 2°F during any one hour. A party is entitled to summary judgment when it shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). To survive a motion for summary judgment, the nonmoving party must offer some “concrete evidence from which a reasonable juror could return a verdict in his [or her] favor[.]” *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 256 (1986). The nonmoving party must satisfy this burden of proof by offering more than a mere “scintilla of evidence” in support of his or her position. *Id.* at 252.

As explained in Plaintiff’s memorandum in support of this motion, there are no genuine issues of material fact and Plaintiffs are entitled to judgment as a matter of law on the jurisdictional issues related to their claims. Moreover, because there are no genuine issue of material fact related to the Defendant’s liability for violating the permit condition at issue in this action, Plaintiff respectfully requests that the Court find the Defendant has violated and

continues to violate that condition. The issues of an appropriate remedy and civil penalty are not addressed in this motion.

Respectfully submitted,

/s/ Benjamin M. Barczewski

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2021 a true and correct copy of the foregoing Motion Partial Summary Judgment was served via the Court's ECF electronic filing system upon the following:

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